

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

LASHIFY, INC.,

Plaintiff,

v.

QINGDAO LASHBEAUTY COSMET-
IC CO., LTD.,

Defendant.

CIVIL NO. W-22-CV-00776-ADA

LASHIFY, INC.,

Plaintiff,

v.

QINGDAO HOLLYREN COSMETICS
CO., LTD,

Defendant.

CIVIL NO. W-22-CV-00777-ADA

ORDER ON DISCOVERY DISPUTES

Before the Court is a Discovery Dispute Chart, attached as part of this Order, which was submitted to the undersigned via email on March 28, 2024. The Court has reviewed the materials submitted and determined that a hearing is not necessary. The Court issues the following rulings:

1. On the issue of Samples of Accused Products (RFP No. 3), Defendant Qingdao Hollyren Cosmetics Co., Ltd. (“Hollyren”) is **ORDERED** to produce by April 8, 2024, samples of all products on Exhibit 1 within its possession, custody, or control, or identify products that have already been produced that Defendant Hollyren stipulates are representative of the un-produced samples. Such production or identification shall be made regardless of whether the products were allegedly sold in the United States.

Defendant Worldbeauty is **ORDERED** by April 8, 2024, to produce a sample of the DIY Kit. All parties, Plaintiff and Defendants, are ordered to provide updated and verified interrogatory answers by April 8, 2024.

2. On the issue of Manufacturing and Sales Information for Accused Products (Interrogatory Nos. 1-2), Defendants are **ORDERED** to supplement their interrogatory answers to provide the manufacturing and sales data identified in Exhibits 8 and 9 by April 8, 2024.

SIGNED this 4th day of April, 2024.


DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE

DISCOVERY DISPUTE CHART

Issue	Lashify's Position (Requesting Party)	Defendants' Positions (Responding Parties)
<p>Samples of Accused Products</p> <p>RFP 3</p>	<p>Lashify served RFP3, which requests samples of the accused products, on March 21, 2023, the first day of fact discovery. Over the last year, the Court has ordered defendants to provide these samples at least four times. Dkt. 77, 99, 107, 117.</p> <p>Hollyren: Hollyren has still failed to produce 80 samples, which are identified in Exhibit 1. For 4 products, Hollyren has never given any reason for failing to provide them.</p> <p>Hollyren claims 51 samples are out of stock, but its sales records show that it sold these products repeatedly during the damages period (a fact that Hollyren has never disputed). Exhibit 2. Hollyren cannot avoid discovery on these products by suddenly claiming they are out of stock. Indeed, Hollyren has produced other products that it previously claimed were out of stock, showing that Hollyren can get additional samples from its manufacturer. In addition, Hollyren's co-defendant Worldbeauty testified that, even if a product were out of stock, it could order the sample from the factory and have it in two days. (Exhibit 3 (Sun Dep. Tr.) 29:3-16.) Hollyren shares the same manufacturer with Worldbeauty. Hollyren's documents also show that they routinely provide hundreds of product samples to prospective customers in a couple of days (<i>see, e.g., Exhibit 4</i> (sending potential customer 828 samples)).</p> <p>Hollyren claims 12 of the products were never sold in the U.S. However, Exhibit 5 summarizes data from Hollyren's own U.S. sales records, which show these products were sold in the U.S. during the damages period.</p> <p>Hollyren claims 12 products have an invalid product number. However, Lashify has identified where in defendant's sales data</p>	<p>As Lashify's ever-shrinking exhibits demonstrate, Defendants have been continually addressing Lashify's concerns by obtaining and providing additional product samples and manufacturing information and investigating Lashify's never-ending list of alleged discovery issues.</p> <p>Worldbeauty and Hollyren both provided verified interrogatory responses to Lashify last week, and will provide further verifications for any additional supplemental responses. Lashify has yet to verify its supplemental interrogatory responses despite Defendants' requests.</p> <p>Worldbeauty: The only "missing" product sample Lashify identifies (among literally hundreds of product samples) is the "DIY Kit." The sales of the "DIY Kit" during the relevant time period appear to be \$1,500 (150 units sold at \$10). <i>See</i> WOR0052034 at line 1726. As Worldbeauty has informed Lashify, the "DIY Kit" includes eyelashes and other items (typically glue, remover, and tweezers), and the kits have varying combinations of lashes. There is not a way to know which type of lashes were in each kit, as each kit was assembled with varying combinations of lash types that is not indicated in the sales data. Worldbeauty is willing to consider a stipulation from Lashify regarding a produced sample being representative of the "DIY Kit" identified in WOR0052034 at line 1726 considering the extremely small quantity at issue here.</p> <p>Hollyren: Hollyren produced 24 additional (and unique) product samples on March 20 and Hollyren anticipates making an additional product sample production in the next week. As Hollyren informed Lashify during a meet and confer on March 18, Hollyren intends to identify a representative product sample for</p>

<p>these product numbers appear (<i>see</i> Exhibit 6). Hollyren has not responded, except to say that FIA07 is a collection name that includes DD701, DD702, and DD703. That representation is inconsistent with Hollyren’s sales documents (HOL000482). Hollyren has not addressed this inconsistency.</p> <p>Hollyren has represented that 1 product (RTJ001) is a strip lash, not an accused DIY lash product. However, Hollyren’s own sales data (HOL0001035) describes RTJ001 as a DIY lash product. Hollyren has not responded to this inconsistency.</p> <p>Hollyren proposed that certain unidentified, produced products be deemed “representative” of the missing product samples. This proposal does not work because Lashify has no information to confirm or refute that these product model numbers are in fact representative. Hollyren should not be able to unilaterally decide that one product is representative.</p> <p><u>Worldbeauty:</u> Worldbeauty has still not produced a sample of the “DIY Kit.”</p> <p>Both defendants have also represented that certain product models are the same as other product models that have been produced. Based on those representations, Lashify has removed those product models from Exhibit 1, but defendants still need to provide <u>verified</u> interrogatory responses confirming this information.</p> <p>Defendants claim to be investigating these issues, but they have been doing so for over 1 year. Fact discovery closed on February 15, and opening expert reports were served on March 5. The Court should order defendants to provide the missing product samples by April 3.</p> <p><u>Requested Relief:</u> The Court should order defendants to comply with the Court’s prior four orders and produce product samples by April 3, 2024 for all of the model numbers</p>	<p>any accused products for which a sample has not been produced, and Hollyren commits to either producing additional samples or identifying the representative samples by April 5, 2024. If Lashify identifies an actual issue with any of Hollyren’s representative products (rather than a hypothetical one), it may raise that issue with Hollyren and the Court if necessary.</p> <p>Lashify’s continued citation to Exhibit 4 (in multiple dispute charts) remains disingenuous. As is clear in Exhibit 4, Hollyren sent 46 different samples (many varying only by lash length and band color) to a customer, not 828 unique samples. In this case, Hollyren has produced well over 100 unique samples of accused products.</p> <p>Hollyren has provided a verified interrogatory response stating that certain products in Hollyren’s sales data (including but not limited to 70C, 70D, AC8000, AC9000, K23, KF001, LF01, SFA0004, SFA001, VRF0006, RTJ001) are strip lashes, salon lashes, glue, tweezers, etc.—indisputably not accused eyelash products. It is not clear what else Lashify wants Hollyren to provide here.</p> <p><u>Requested Relief:</u> The Court should deny Lashify’s request. Hollyren has committed to identify representative product samples for any accused products for which a sample has not been produced by April 5, 2024. And Defendants have provided verified interrogatory responses and have agreed to provide verified supplemental responses as needed. The Court should also order Lashify to verify its interrogatory responses.</p>
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	identified in Exhibit 1 . The Court should also order defendants to provide verified interrogatory responses confirming prior representations about certain product numbers being the same as other product numbers that have been provided.	
Manufacturing and Sales Information for Accused Products Interrogatory Nos. 1-2	<p>Lashify served Interrogatories 1 and 2, which request manufacturing and sales information for the accused products, on March 21, 2023, the very first day of fact discovery. Over the last year, the Court has ordered defendants to provide this information at least four times. Dkt. 77, 99, 107, 117.</p> <p>Lashify is still missing product information for the Hollyren products in Exhibit 7 and the Worldbeauty “DIY Kits.” Worldbeauty has represented that DB16L is the same as EB16-1, but Worldbeauty still needs to confirm this in a verified interrogatory response.</p> <p>In addition, defendants have still not produced sales information for the products identified in Exhibit 8 or provided the missing unit information requested in Exhibit 9, which the Court ordered defendants to provide by January 18. Dkt. 107 at 9-10.</p> <p>Here again, defendants claim to still be investigating these issues, but they have been investigating for over 1 year. Fact discovery is over, and the parties are now working on rebuttal expert reports. The Court should order defendants to provide the missing sales and manufacturing information by April 3, 2024.</p> <p><u>Requested Relief:</u> The Court should order defendants to comply with the Court’s prior four orders and produce the missing sales and manufacturing information identified in Exhibits 7, 8, and 9 by April 3, 2024. The Court should also order defendants to provide verified interrogatory responses confirming prior representations about certain product models being the same as other product models.</p>	<p>Worldbeauty addressed the “DIY Kit” above, and already committed to providing a further verified supplemental interrogatory response for the few product sample representations remaining.</p> <p>Hollyren has identified the manufacturing methods for 28 of the 50 model numbers listed in Exhibit 7. As noted above, Hollyren has already provided a verified interrogatory response stating that almost every other model number listed is not an accused eyelash product or is not a valid model number—it is not clear what else Lashify wants Hollyren to provide here.</p> <p>Hollyren identified the contents of specific DIY lash kits in its February 15, 2024 supplemental response to interrogatory no. 1. If Lashify believes others remain unidentified, it has not previously raised this issue with Hollyren.</p> <p>The Court ordered the parties to meet and confer regarding Lashify’s outstanding questions regarding sales (March 7, 2024 Hearing Tr. at 33:25-35:6), and the parties are engaged in that process.</p> <p>As is clear from Exhibit 8, Lashify does not contend that any sales information for Worldbeauty is missing from Worldbeauty’s production. As Worldbeauty has told Lashify, Worldbeauty is investigating the alleged inconsistencies in the number of pairs sold that Lashify identified in WOR0052034 (in Exhibit 9). Worldbeauty will provide a verified supplemental interrogatory response to interrogatory no. 9 if there is any information to supplement regarding Lashify’s questions here.</p> <p>During the parties’ March 18 meet and con-</p>

		<p>fer (and again via email on March 26), Hollyren confirmed that it does not track the number of pairs of lashes sold in the regular course of business, and further this information may or may not be reflected on individual invoices. Hollyren has followed up with Lashify regarding Lashify's remaining questions for Hollyren on Exhibit 9, but Lashify has not yet provided a response.</p> <p><u>Requested Relief:</u> The Court should deny Lashify's request in light of the Court's prior order to meet and confer regarding Lashify's outstanding questions regarding sales data and Defendants' ongoing cooperation in providing the additional information requested when possible. Lashify's list of issues has grown very small due to Defendants' cooperation and the present circumstances have passed the point of diminishing returns from costly discovery dispute practice.</p>
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EXHIBIT 1

Exhibit 1: Product Model Numbers for Which Defendants Have Not Produced Physical Samples

I. Hollyren

Hollyren Product Model Number	Reason Not Produced
BDD002	Never sold in U.S.
BDD004	Never sold in U.S.
BDD006	Never sold in U.S.
BDD007	Never sold in U.S.
BDD011	Never sold in U.S.
BDD015	Never sold in U.S.
BVPX01	Never sold in U.S.
CDD001	Hollyren and manufacturer have no stock, sample will have to be made
CDD003	Hollyren and manufacturer have no stock, sample will have to be made
CDD004	Hollyren and manufacturer have no stock, sample will have to be made
CDD005	Hollyren and manufacturer have no stock, sample will have to be made
CDD006	Hollyren and manufacturer have no stock, sample will have to be made
CT014	Never sold in U.S.
CT026	Never sold in U.S.
CT033	Never sold in U.S.
DB025	Not a valid model number
DD011	Hollyren and manufacturer have no stock
DD012	Hollyren and manufacturer have no stock
DD718	Never sold in U.S.
DD801	Hollyren and manufacturer have no stock, sample will have to be made
DD802	Hollyren and manufacturer have no stock, sample will have to be made
DD803	Hollyren and manufacturer have no stock, sample will have to be made
DD804	Hollyren and manufacturer have no stock, sample will have to be made

Hollyren Product Model Number	Reason Not Produced
DRC001	Hollyren and manufacturer have no stock, sample will have to be made
DRC003	Hollyren and manufacturer have no stock, sample will have to be made
DRC010	Hollyren and manufacturer have no stock, sample will have to be made
DRC017	Hollyren and manufacturer have no stock, sample will have to be made
DRC019	Hollyren and manufacturer have no stock, sample will have to be made
DRC029	Hollyren and manufacturer have no stock, sample will have to be made
DRC040	Hollyren and manufacturer have no stock, sample will have to be made
DRC047	Hollyren and manufacturer have no stock, sample will have to be made
DRC049	Hollyren and manufacturer have no stock, sample will have to be made
DRC401	Hollyren and manufacturer have no stock, sample will have to be made
DRC402	Hollyren and manufacturer have no stock, sample will have to be made
DRC403	Hollyren and manufacturer have no stock, sample will have to be made
DRC404	Hollyren and manufacturer have no stock, sample will have to be made
DRC405	Hollyren and manufacturer have no stock, sample will have to be made
DRC406	Hollyren and manufacturer have no stock, sample will have to be made
DRC407	Hollyren and manufacturer have no stock, sample will have to be made
DRC408	Hollyren and manufacturer have no stock, sample will have to be made
DV014	No information provided
DV017	No information provided

Hollyren Product Model Number	Reason Not Produced
DYC024	Hollyren and manufacturer have no stock
DYC04 (and DYC0401, DYC0403, and DYC0405, if they are different)	Hollyren and manufacturer have no stock, sample will have to be made
DYC07	Hollyren and manufacturer have no stock, sample will have to be made
DYC08	Hollyren and manufacturer have no stock, sample will have to be made
DYC701	Hollyren and manufacturer have no stock, sample will have to be made
DYC801	Hollyren and manufacturer have no stock, sample will have to be made
DYCCSDK001/DYCCS	Not a valid model number
DYCCSDK002/DYCCS	Not a valid model number
K01	Hollyren and manufacturer have no stock
K02	Hollyren and manufacturer have no stock
K03	Hollyren and manufacturer have no stock
K04	Hollyren and manufacturer have no stock
K05	Hollyren and manufacturer have no stock
K06	Hollyren and manufacturer have no stock
KLL0001	Not a valid model number
KLL0002	Not a valid model number
KLL0003	Not a valid model number
RA019	Never sold in U.S.
XEM009	Hollyren and manufacturer have no stock
XEM07	Hollyren and manufacturer have no stock
"DIY Lashes Kits"	No information provided
70C	Not a valid model number ¹
70D	Not a valid model number ¹
C014	Hollyren and manufacturer have no stock, sample will have to be made
DD119	Hollyren and manufacturer have no stock
DD128	Hollyren and manufacturer have no stock

¹ Hollyren has represented that 70C and 70D are strip lashes. However, Hollyren's sales data (including HOL0001030, HOL0001035, HOL0001036 and HOL0001037) identify 70C and 70D as DIY lash products.

Hollyren Product Model Number	Reason Not Produced
DD735	Hollyren and manufacturer have no stock, sample will have to be made
DGKT01	Not a valid model number
DYC0ZJJ	Not a valid model number
FA04	Hollyren and manufacturer have no stock, sample will have to be made
FIA07 (including all models starting with AXFIA07 or AW-FIA07)	Not a valid model number ²
FV004	Hollyren and manufacturer have no stock, sample will have to be made
JHD002	Hollyren and manufacturer have no stock, sample will have to be made
JHD004	Hollyren and manufacturer have no stock, sample will have to be made
KLCE01	No information provided
LQ033	Not a valid model number
MJD010	Hollyren and manufacturer have no stock, sample will have to be made
RTJ001 (and RTJ00, if this is different)	RTJ001 is a model number for strip lashes, RTJ00 is not a valid model number ³

² Hollyren has represented that FIA07 is a collection name that includes DD701, DD702 and DD703. However, this representation is inconsistent with Hollyren's sales documents, including HOL000482, columns K and L.

³ Hollyren's sales data (including HOL00001030, HOL00001036, and HOL00001037) describe RTJ001 as a DIY lash, not a strip lash.

II. Worldbeauty

Product Model Number	Reason Not Produced
"DIY Kit"	No information provided

EXHIBIT 8

Exhibit 8: Product Model Numbers Missing Sales Information**I. Hollyren**

Hollyren Product Model Number
DD013 ¹
DD119
DD128
DV10-5P
DV28-5P
DVG88-5P
DYC701
FV02
PDD05

II. Worldbeauty

Worldbeauty Product Model Number
EB16-1 ²

¹ Hollyren has represented that “DD013” is not a model number, but Hollyren has provided manufacturing information for DD013 in its response to Interrogatory No. 2 as recently as February 15, 2024.

² Worldbeauty has represented this is the same as DB16-1 and DB16L but has not provided a verified interrogatory response with this information.

EXHIBIT 9

Jon McMichael

From: Jon McMichael
Sent: Wednesday, March 20, 2024 8:58 AM
To: rhorton@gbkh.com; Shen.Hui@dorsey.com; miller.mark@dorsey.com; kolter.erin@dorsey.com; godfrey.geoff@dorsey.com; foster.brett@dorsey.com; kapaloski.tammy@dorsey.com; Lashify-Litigation@dorsey.com
Cc: Saina Shamilov; Bryan Kohm; Melanie Mayer; Shannon Turner; ddacus; Lashify WDTX
Subject: Lashify v. Worldbeauty, Hollyren (W.D. Tex.) - Financial Information

Erin,

Below are the issues subject to Lashify's Motion to Compel a Rule 30(b)(6) Witness on Financial Topics, where the Court ordered the parties to meet and confer regarding whether defendants can provide the requested information in a supplemental interrogatory response (Dkt. 130 at 10-11). Please let us know whether defendants will provide this information and when you are available to confer.

a. Worldbeauty

- Worldbeauty's information regarding the number of pairs of lashes sold, for example, in Column P of WOR0052034, is inconsistent with the data in other columns. We need Worldbeauty to explain the reasons for these inconsistencies and which columns are accurate. For example:
 - Rows 2168 to 2170 show that one transaction includes 72 units of C2-12, 175 units of C2-14, and 106 units of C2-16 (see Column I). The total amount of units across the three models is 353. But Column P states that the total number of pairs across all three models is 800.
 - In Rows 1822-1826, the quantity values in Column I total 159 but the number of pairs in Column P is 360 combined.
 - In Rows 976-987 and 992-995, Column I values similarly do not match those in Column P. For Rows 976-979, the quantity values in Column I total 240 but the number of pairs in Column P is 500 combined. For Rows 980-983 and 984-987, the quantity values in Column I total 200 but the number of pairs in Column P is 500 combined. For Rows 992-995, the quantity values in Column I total 425 but the number of pairs in Column P is 500 combined.
 - In Rows 1640-1641, the quantity for each in Column I is 100, but the number of pairs in Column P is 500 combined.
 - In Rows 1875-1877, the values in Column I total 3 (each row has a quantity of 1), but the number of pairs in Column P is 1 for all three combined.
 - Similarly, in Rows 1878-1880 and 1881-1883, the values in Column I total 6 (each row has a quantity of 2), but the number of pairs in Column P is 1 for all three combined.
 - In Row 2953 for C10-12mm, the quantity in Column I is 10, but the number of pairs in Column P is 2.
- The Court ordered Worldbeauty to provide documents showing its companywide revenues for 2015-2021. Please let us know when we can expect this information.

b. Hollyren

- Hollyren did not produce information about the number of pairs of lashes sold, for example, in HOR00058026. We understand from our call on Monday that Hollyren does not track this information, that the only way to obtain it would be to manually review all product invoices, and that not all product invoices have been produced.
- The scope of HOL0058025 is ambiguous. We asked whether this document includes global sales or sales from certain regions (i.e., is it limited to the United States?) and whether it encompasses all of Hollyren's sales or only a subset of products. You responded on 2/8 that it includes "global sales and all global

costs.” To clarify, does it include “all” global sales and “all” global costs, or some subset of sales and costs?

- HOL0058025 also includes line items such as publicity and promotion fees and “financial” expenses, “consulting service fee” as well as “other selling expenses,” for which Hollyren has provided no information. Please explain what these line items represent.

Jon

Jon McMichael

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